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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

PAUL J. THOMPSON,
ABBOTT L. FLETCHER,
W. H. OPPENHEIMER,
MONTREVILLE J. BROWN,
Counsel for Appellees.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION,

Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

STATEMENT BY APPELLEES OF GROUNDS IN OPPOSITION TO APPELLATE JURISDICTION OF ABOVE COURT AND IN THE ALTERNATIVE MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT OF THE LOWER COURT

The appellees state the following matters and grounds against the jurisdiction of this court as asserted by the appellant herein, in his statement of the bases of the appel-

late jurisdiction, filed herein on the 8th day of November, 1944, as required by Rule 12 of the Supreme Court:

1. Appellant in his statement bases jurisdiction of the above court on the ground that the Minnesota Statute attacked takes property from the City of Minneapolis, a municipal corporation organized under the laws of the State of Minnesota, without due process and also denies to that city the equal protection of the laws, in violation of the provisions of the 14th Amendment to the Federal Constitution. Under previous decisions of the above court, the due process and equal protection clauses of the 14th Amendment are not invocable on behalf of municipal corporations. Because of these decisions appellees contend that appellant fails in his statement of bases of appellate jurisdiction to raise a substantial federal question and that by reason of this there is want of jurisdiction.

In support of this contention appellees cite the following cases:

Hunter v. *City of Pittsburgh*, 207 U. S. 161, 52 L. ed. 151, 28 Sup. Ct. Rep. 40;

City of Trenton v. *State of New Jersey*, 262 U. S. 182, 67 L. ed. 937, 43 Sup. Ct. Rep. 534 and 29 A. L. R. 1471;

Williams v. *Baltimore*, 289 U. S. 36, 77 L. ed. 1015, 53 Sup. Ct. Rep. 431;

Coleman v. *Miller*, 307 U. S. 433, 83 L. ed. 1385, 59 Sup. Ct. Rep. 972;

Patterson v. *Stanolind Oil & Gas Co.*, 305 U. S. 376, 83 L. ed. 231, 59 Sup. Ct. Rep. 259.

2. Appellant sues as a taxpayer and as such has not such legal interest in the question whether or not the statute atacked is constitutional under the Federal Constitution,

sufficient to enable him to invoke the appellate jurisdiction of the above court.

In support of this contention appellees cite the following cases:

Stewart v. *City of Kansas City*, 239 U. S. 14, 60 L. ed. 120, 36 Sup. Ct. Rep. 15;

Standard Stock Food Co. v. *Wright*, 225 U. S. 540, 56 L. ed. 1191, 32 Sup. Ct. Rep. 784;

Roberts & Schaefer Co. v. *Emmerson*, 271 U. S. 50, 70 L. ed. 827, 46 Sup. Ct. Rep. 375;

Columbus & Greenville Ry. Co. v. *Miller*, 283 U. S. 96, 75 L. ed. 861, 51 Sup. Ct. Rep. 392;

Coleman v. *Miller*, 307 U. S. 433, 441, 83 L. ed. 1385, 1390, 59 Sup. Ct. Rep. 972.

3. The suit is now moot. It is one to restrain the members of the Board of Park Commissioners of the City of Minneapolis, a department of the government of the city, "from turning over, surrendering, conveying, transferring, assigning, selling or giving" the Minneapolis Municipal Airport (Wold-Chamberlain Field) to the Minneapolis-St. Paul Metropolitan Airports Commission as provided and required under the statute attacked. The constitutionality of the statute was raised on appellant's motion for a temporary injunction and appellees' demurrer to the complaint. There was a restraining order. The trial court denied the motion, sustained the demurrer and vacated the restraining order. On appeal to the Supreme Court of the State of Minnesota, that court affirmed the action of the lower court in a decision handed down on July 28, 1944. Judgment of affirmance was entered in that court on August 12, 1944. Thereafter and on or about August 15, 1944, pursuant to said statute and a written instrument as to details, executed by said City of Minneapolis, acting through its said Park

Board, and said Minneapolis-St. Paul Metropolitan Airports Commission on the 14th of August, 1944, said airport, equipment and appurtenances were transferred to said Minneapolis-St. Paul Metropolitan Airports Commission, and said commission has been at all times since and is now in possession thereof and operating the same pursuant to and in accordance with said statute. The acts sought to be restrained have been performed by the appellees, and as a consequence there is nothing now upon which the action can operate. The case is moot.

In support of this contention appellees cite the following cases:

Tyler v. *Judges of the Court of Registration,* 179 U. S. 405, 409, 45 L. ed. 252, 21 Sup. Ct. Rep. 206;

Jones v. *Montague,* 194 U. S. 147, 48 L. ed. 913, 24 Sup. Ct. Rep. 611;

Re Lincoln, 202 U. S. 178, 50 L. ed. 984, 26 Sup. Ct. Rep. 602;

Chandler v. *Wise,* 307 U. S. 474, 83 L. ed. 1407, 59 Sup. Ct. Rep. 992;

St. Pierre v. *United States,* 319 U. S. 41, 87 L. ed. 1199, 63 Sup. Ct. Rep. 910.

4. The judgment of the Supreme Court of the State of Minnesota sustaining appellees' demurrer to appellant's complaint and vacating the restraining order, is not a final judgment or decree reviewable in the above court on appeal.

In support of this contention appellees cite the following case:

Vicksburg Water Works Co. v. *Yazoo & Mississippi Valley R. R. Co.,* 220 U. S. 601, 55 L. ed. 603, 31 Sup. Ct. Rep. 715.

On the foregoing matters and grounds against the jurisdiction of the above court, appellees move said court to dismiss with costs the appeal taken herein.

Such statement and motions are submitted on all the files and records herein and on the affidavits hereto attached and made a part hereof, marked Exhibits A and B.

And said appellees move this court in the alternative to affirm the judgment from which said appeal purports to have been taken because although the record in said cause may show that this court has jurisdiction in the premises, yet it is manifest that the questions on which the decision of the case depends are so unsubstantial as not to need further argument.

Dated November 18th, 1944.

Respectfully submitted,

PAUL J. THOMPSON,
ABBOTT L. FLETCHER,
610 Midland Bank Bldg.,
Minneapolis, Minnesota, and
W. H. OPPENHEIMER,
MONTREVILLE J. BROWN,
W 1781 First National Bank Bldg.,
St. Paul, Minnesota,
Counsel for Appellees.

EXHIBIT A

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN, *Appellant,*

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK and WASHINGTON YALE, and MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Appellees*

Affidavit

STATE OF MINNESOTA,
County of Hennepin, ss:

Francis A. Gross and Charles E. Doell, being first duly sworn, depose and say: that they are respectively the president and the secretary of the Board of Park Commissioners of the City of Minneapolis, and they held their respective positions on August 1st, 1944, and ever since have and do now occupy the same positions at the time of the making of this affidavit.

That on the first day of August, 1944, as appears from the certified copy of the minutes of the regular meeting of the Board of Park Commissioners on August 2, 1944, the special committee on Aviation, and the standing committees on Finance, Improvements and Designation and Acquisition of Grounds, acting jointly, respectfully reported to the Board of Park Commissioners, a resolution which was passed by ten yeas and one nay at the regular meeting of said Board on August 2, 1944, all as appears from the certified copy of said minutes of the meeting of August 2, 1944, attached hereto and made a part hereof.

That pursuant to the report of said committees and said resolution so adopted by said Board of Park Commissioners August 2, 1944, the said affiants, as president and as secretary of said Board, on behalf of the City of Minneapolis, acting by and through its Board of Park Commissioners, executed and delivered the two contracts described in said resolution and which were submitted to the Board of Park Commissioners at said meeting, each contract being dated August 14, 1944, and being with the Minneapolis, St. Paul Metropolitan Airports Commission, the said contracts being in all respects as authorized by said Resolution of August 2, 1944. That at the time of the execution and delivery of said contracts and pursuant thereto, the Board of Park Commissioners and the City of Minneapolis acting by and through its Board of Park Commissioners, turned over the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) pursuant to the terms of Chapter 500, of the Session Laws of Minnesota for 1943, and all the personal property used in connection with said airport, was also transferred at said time and this transfer of title was absolute, and ever since the 15th day of August, 1944, the said Minneapolis, St. Paul Metropolitan Airports Commission has had, and now has, the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) pursuant to said Chapter 500, and the ownership of said personal property.

FRANCIS A. GROSS,
CHAS. E. DOELL.

Subscribed and sworn to before me this 15 day of November, 1944.

CHAS. A. HEARN,
[Seal.] *Notary Public, Hennepin County, Minn.*

My commission expires Oct. 6, 1950.

EXHIBIT A-1

BOARD OF PARK COMMISSIONERS

REGULAR MEETING

August 2, 1944

Office of the Board of Park Commissioners,

Minneapolis, Minn.,
August 2, 1944.

President Gross in the chair.

Present—Commissioners Armatage, Bank, Chalgren, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—11.

Absent—Commissioners Kline, Knight, Tearse and Christensen—4.

Commissioner Yale—

Moved that the reading of the minutes of the regular meetings of June 21, July 5, and July 19, 1944, and the annual meeting of July 17, 1944, be dispensed with and that the minutes as printed be approved.

Adopted.

Petitions and Communications

From the City Treasurer—

Reporting cash deposited during the month of July, 1944, as follows:

Park Operating Fund:

Accounts Receivable		
Outside Parties	$ 766.51	
Inter-Fund	519.56	1,286.07
Revenue—Park Trucks		5,610.55
Revenue—Refectories		
Calhoun Baths	$1,783.60	
Calhoun Boats	3,017.79	
Harriet	4,453.35	
Minnehaha	6,045.41	
Nokomis	3,215.40	18,515.55

Revenue—Golf Courses		
Armour	$4,413.34	
Columbia	6,023.06	
Hiawatha	4,323.71	
Meadowbrook	1,791.77	
Theo. Wirth	4,885.62	21,437.50
Revenue—Airport Refectory		14,742.58
Total Park Operating Fund		$61,592.25

General Fund:

Accounts Receivable		
Outside Parties		$1,227.50
Revenue—Court Fines		56.00
Revenue—Boat and Canoe		
Licenses		36.00
Revenue—Baths		
Calhoun	$1,223.75	
Nokomis	486.25	
Webber	172.90	
Wirth	50.00	1,932.90
Revenue—Boats		
Calhoun	$4,695.45	
Harriet	1,329.25	6,024.70
Revenue—Gateway Station		28.55
Total General Fund		$9,305.65

Airport Fund:

Accounts Receivable		
Outside Parties	$7,292.67	
Revenue—General	23.65	
Total Airport Fund		$7,316.32

Playground Fund:

Accounts Receivable	
Outside Parties	600.00
Total all funds	**$78,814.22**

From the City Comptroller—

Reporting taxes credited to various park funds during the month of July, 1944, as follows:

Park General Fund	$44,504.12
Park Playground Fund	13,415.19
Street Forestry Fund	1,312.01
Airport Maintenance Fund	70.05
Acquisition Fund	4,632.38
Total	**$63,933.75**

From the City Clerk—

Transmitting action of the City Council requesting the Park Board and the N. P. Railroad Company to cooperate in cutting the trees on Main Street between Thirteenth and Fourteenth Avenues Northeast.

From the Minneapolis Aquatennial Association—

Expressing appreciation for the Board's cooperation in making possible the God's Out-of-Door Temple Interdenominational Civic Service at Powderhorn Park.

From John T. McRae—

Expressing appreciation for the Resolution honoring Alexander A. McRae.

All placed on file.

From the University of Minnesota, Department of Buildings and Grounds—

Requesting permission to construct and maintain an extension of the University's sewer system on and across park

property in the vicinity of River Road East and Harvard Street.

Referred to the Standing Committee on Improvements.

From the Loring-Park Community Council—

Requesting the use of Loring park for a community picnic.

Referred to the Standing Committee on Playgrounds and Entertainments.

From the Dayton Company—

Requesting permission to use a portion of The Parade for a helicopter demonstration.

Referred to the Standing Committees on Playgrounds and Entertainments and Finance, acting jointly.

From the East Minneapolis Recreation Association, Inc.—

Requesting the Board to acquire the old Trudeau School site in Southeast Minneapolis for playground purposes.

Referred to the Standing Committees on Playgrounds and Entertainments, Designation and Acquisition of Grounds, Improvements and Finance, acting jointly.

Reports of Officers

From C. A. Bossen, Superintendent—

Submitting report on the activities of his department for the month of July, 1944.

Placed on file.

Reports of Standing Committees

From the Standing Committee on Finance.

Minneapolis, Minn.,
July 21, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN: Your Standing Committee on Finance respectfully reports and recommends the approval of the payroll for July 1-15, inclusive, 1944, and a warrant was or-

dered drawn for the payment of the same amounting to $41,752.40.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Yeas—11; Nays—0.

Yeas—Commissioners Armatage, Bank, Chalgren, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—11.

Minneapolis, Minn.,
July 25, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN: Your Standing Committee on Finance respectfully reports that consideration has been given to the report of the Superintendent and Airport Director setting forth the circumstances under which the automobile of Mr. Lawrence E. Alberts was damaged by a Park Board crew engaged in work on the parking area, and now recommends that Mr. Alberts be reimbursed in the sum of $7.00 for damages to his automobile upon his furnishing the necessary release from further claim.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Yeas—11; Nays—0.

Yeas—Commissioners Armatage, Bank, Chalgren, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—11.

Attached—
Recommendation of Airport Director—7/24/44.

Minneapolis, Minn.,
July 26, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN: Your Standing Committee on Finance to whom was referred the report of the Superintendent dated July 26, 1944, concerning the case of Ole M. Erickson, an employee of the Board who was injured while on duty, respectfully reports and recommends that Mr. Erickson be placed on the Workmen's Compensation payroll and paid according to the terms of the Workmen's Compensation Law for 50% permanent partial disability of his right second finger, amounting to $300.00 at $20.00 per week; and recommends further that 2 per cent on Mr. Erickson's award of $300.00, or $6.00, be paid by check to the Industrial Commission for the benefit of the Special Compensation Fund.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—
Report of Dr. A. A. Zierold—7/25/44.
Recommendation of Superintendent—7/26/44.

Minneapolis, Minn.,
July 31, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Finance respectfully reports that it has considered the report of the Superintendent in the case of Peter A. Cook, a painter, who was granted vacation time in error, and now recommends that Mr. Cook be granted ten days' leave of absence with pay which is to be charged up against his vacation time as earned, all subject to the approval of the Civil Service Commission.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Superintendent—7/31/44.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Finance respectfully reports that consideration has been given to the report of the Superintendent and the Director of Recreation concerning the progress of the survey on recreation now being made by Mr. L. H. Weir of the National Recreation Association pursuant to action of the Board taken on April 5, 1944, and expressing the opinion that because of the diversion of some of Mr. Weir's time to advantageous purposes it appears doubtful that his survey can be completed within the two months' period established by said Board action. Your committee recommends that an additional two weeks' period over and above that set forth in action

of the Board on April 5 be granted to Mr. Weir for the purpose of completing his study and reports.

Respectfully submitted,

WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Director of Recreation—8/1/44.
Recommendation of Superintendent—8/2/44.

From the Standing Committee on Improvements.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Improvements respectfully reports that consideration has been given to the request of the Department of Buildings and Grounds of the University of Minnesota for permission to construct and maintain an extension of the University's sewer system on and across park property in the vicinity of River Road East and Harvard Street as shown on the attached plan marked drawing No. 2799, and in that connection has considered the report of the Superintendent and Engineer thereon and now recommends that the Department of Buildings and Grounds of the University of Minnesota be granted permission to construct and maintain sewer line shown on said drawing No. 2799 leading from the Nurses' Home and Pioneer Hall onto and across park property which is a part of River Road East just west of Harvard Street upon the following conditions:

1. That said construction shall not be undertaken unless the plan for said construction is approved by the City Engineer and his sewer department.

2. Said construction and subsequent maintenance is to be borne exclusively by the permittee hereof.

3. That during said construction or subsequent maintenance all usual precautions shall be taken to safeguard the public against injury, and the permittee shall save this Board free and harmless from any and all liability which may arise out of said construction or subsequent maintenance.

4. That after said construction, park property is to be left in as good condition as when entered upon, and in case of any future settlement of excavations, the permittee shall restore such sunken areas to the original grade.

5. This permit shall not take effect unless within thirty (30) days the permittee hereof shall notify the Secretary of this Board that it agrees to the conditions imposed by this permit.

Respectfully submitted,

PAUL C. JOHNSON,
C. L. STACY,
WASHINGTON YALE,
W. P. QUIST,
H. H. BANK,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Communication from University of Minnesota—7/29/44.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Improvements to whom was referred the request of the Men's Club of St. Helena's Parish requesting that there be included in the postwar im-

provement projects, a project for the control of Minnehaha Creek between Thirty-eighth Avenue South and Nokomis Avenue respectfully reports that consideration has been given thereto and to the report of the Superintendent thereon and further reports that recommendations for the flood control of Minnehaha Creek are contained in a report as an appendix of the 1943 annual report and that these recommendations have been included in the projects for the postwar period, and now recommends that the Men's Club of St. Helena's Parish be so informed and that a copy of the report be sent to them.

Respectfully submitted,

PAUL C. JOHNSON,
WASHINGTON YALE,
C. L. STACY,
WALTER P. QUIST,
H. H. BANK,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Communication from Men's Club, St. Helena's Parish—5/15/44.

From the Standing Committee on Playgrounds and Entertainments

Minneapolis., Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Playgrounds and Entertainments respectfully reports that consideration has been given to the request of the Loring-Park Community Council for the use of Loring Park on Monday, August 14, 1944, for a community picnic, and your committee recommends

that said request be granted subject to the supervision of the Superintendent of Parks.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Request of Loring-Park Community Council—7/31/44.

Minneapolis, Minn.
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Playgrounds and Entertainments respectfully reports that requests have been made to officers of the Board by representatives of community organizations for permission to operate seven rides at community celebrations in place of five as provided for in the regulations of the Board pertaining to such celebrations, and now recommends that that part of the regulations adopted February 21, 1940, providing for five rides and modified on May 6, 1942, to provide for six rides be now further modified so that seven rides will be permitted for all such community celebrations.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
FRANCIS A. GROSS,
Committee.

Adopted.

Minneapolis, Minn.,
July 28, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committee on Playgrounds and Entertainments respectfully reports that consideration has been given to a report of the Superintendent referring to a study of the state's fishing laws being made by the interim committee of the legislature, and calling attention to certain inconsistencies existing in the present laws with reference to fishing in the city of Minneapolis, and further calling attention to certain corrective measures which should be taken in case the fishing laws of the state are revised. Your committee therefore recommends that the Commissioner of Conservation or other officials in charge of developing the revisions of the fishing laws be requested to include the following provisions:

(1) If the present opening date of fishing in lakes outside the city is changed to May 15 or another date, that the same opening date apply to the lakes in the city of Minneapolis.

(2) That the closing date of fishing in lakes in Minneapolis be not changed but remain the same as at present, namely, November 1. The reason for this is that city lakes are used for various ice sports such as skating and ice boating and that if winter fishing were permitted, serious hazards would be created.

(3) Theodore Wirth Lake (formerly Glenwood Lake) which is outside the corporate limits of the city of Minneapolis but within the park system of the city, should be closed to winter fishing the same as the city lakes.

(4) That section of the present laws relating to game and fish known as section No. 101.19 entitled "Fishing in Minneapolis" should be so worded as to apply to Minne-

apolis, thereby altering the phrase "not operating under home rule charter."

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Superintendent—7/28/44.
Reports of Lt. Bloomgren—6/19/44 and 7/19/44.

Reports of Special and Joint Committees

From the Joint Committee on Playgrounds and Entertainments and Finance

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committees on Playgrounds and Entertainments and Finance, acting jointly, respectfully report that consideration has been given to a request of the Dayton Company for permission to use a portion of The Parade for a helicopter demonstration sometime probably before mid September, and in that connection have considered the report of the Superintendent thereon, and now recommend that permission be granted to the Dayton Company to use the so-called circus grounds north of Wayzata Boulevard and west of Dunwoody Institute for the purpose of a helicopter demonstration under the supervision of the Superintendent of Parks and on the payment of a $100 fee, and upon the further condition that all necessary permits, licenses, clearances, etc., be obtained from such federal, state and local authorities as may have jurisdiction over such

demonstrations, and further that all laws, rules and regulations of federal, state and local departments be complied with, and that this Board be saved free from any and all liability by reason of this permit.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
WASHINGTON YALE,
C. L. STACY,
EDWARD CHALGREN,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—
Request of the Dayton Company—7/21/44.

From the Joint Committee on Aviation, Finance and Improvements.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Special Committee on Aviation and Standing Committees on Finance and improvements, acting jointly, respectfully report that in carrying on construction work at the Municipal Airport under previous W.P.A. projects, certain alterations had been made to the grade of Thirty-fourth Avenue South between Fifty-ninth Street and Sixty-fourth Street with the approval of the City Council and the County Board; that providing a roadway surface equal to that on the original roadway has been hampered by weather conditions, the necessity of keeping traffic open and similar conditions, but that now it is in good condition to surface. To

facilitate public access to the airport, your committee now recommends that the Superintendent be authorized to make the necessary expenditures from the Airport Fund to suitably surface said Thirty-fourth Avenue from Fifty-ninth Street to Sixty-fourth Street.

Respectfully submitted,

WASHINGTON YALE,
PAUL C. JOHNSON,
WALTER P. QUIST,
MAUDE D. ARMITAGE,
JOSEPH A. WOJCIAK,
A. F. PILLSBURY,
C. L. STACY,
EDWARD CHALGREN,
H. H. BANK,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—
Recommendation of Park Engineer—8/1/44.

From the Joint Committee on Playgrounds and Entertainments, Designation and Acquisition of Grounds, Improvements and Finance.

Minneapolis, Minn.,
August 2, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Standing Committees on Playgrounds and Entertainments, Designation and Acquisition of Grounds, Improvements and Finance, acting jointly, respectfully report that consideration has been given to a request of the East Minneapolis Recreation Association, Inc. that this Board acquire the old Trudeau School site in Southeast

Minneapolis for playground purposes and that further development of this site be placed on the postwar project list of this Board, and in that connection have also considered the report of the Superintendent and his staff thereon.

The matter of playground requirements for this section of the second ward was the subject of a report dated July 29, 1937, and of a playground survey made April 6, 1938. It was recommended that an adequate site for playground and park purposes in this section was somewhat west of the Trudeau School site. The report of April 6, 1938, above referred to, further pointed out that real progress toward the solution of problems arising out of inadequate playground facilities could not be made until adequate funds for maintenance and operation were provided.

In the opinion of your committees, the Trudeau School site is inadequate in size and would ultimately have to be enlarged to probably a two block area; should this be done, it is still not in a suitable location; in its present situation the conduct of a recreation program there would be so limited and have such a small beneficial effect upon the neighborhood that its cost could not be justified; that in any event the cost of operating additional play areas cannot be met out of current finances of this Board.

Therefore, your committees recommend that the request of the East Minneapolis Recreation Association, Inc. be not granted. At the same time, your committees recognize the need for recreation facilities and of the conduct of an adequate recreation program in that area of the second ward, especially west of Tenth Avenue. They also recognize the needs of a number of similar areas throughout the city, all of which will be more thoroughly covered in a forthcoming recreation survey now being conducted.

Your committees recommend that the Board call to the attention of the East Minneapolis Recreation Association, Inc. the fact that such a survey is being made and request said association to give careful consideration to the findings of such a survey when it is complete, to the end that

adequate and appropriate solutions to community problems covered therein may be found.

Respectfully submitted,

MAUDE D. ARMATAGE,
WALTER P. QUIST,
JOSEPH A. WOJCIAK,
PAUL C. JOHNSON,
T. F. MCCARTHY,
C. L. STACY,
WASHINGTON YALE,
H. H. BANK,
A. F. PILLSBURY,
FRANCIS A. GROSS,
Committee.

Adopted.

Attached—

Recommendation of Superintendent, Director of Recreation, and Secretary and Ass't Superintendent—8/2/44.

Request of East Minneapolis Recreation Association, Inc.—7/21/44.

From the Joint Committee on Aviation, Finance, Improvements and Designation and Acquisition of Grounds

Minneapolis, Minn.,
August 1, 1944.

To the Honorable Board of Park Commissioners:

GENTLEMEN:

Your Special Committee on Aviation and Standing Committees on Finance, Improvements and Designation and Acquisition of Grounds, acting jointly, respectfully report that consideration has been given to various details preparatory to turning over to the Minneapolis-Saint Paul Metropolitan Airports Commission the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) and particular attention has been given to two proposed contracts between the Board and said Commission, to-wit: (1) A contract describing and enumerating what proper-

ties are to be so taken over, under what conditions and with what encumbrances or limitations and stating the rights, privileges and obligations of the parties thereto, and fixing the date of taking over as August 15, 1944, all as per copy transmitted herewith dated August 14, 1944; and (2) a contract whereby this Board agrees to furnish certain labor, material, supplies and supervision at cost plus overhead up to July 1, 1945, under certain conditions, the purposes being to preserve the civil service and pension status of present airport employees and to facilitate the operation during a transition period. A copy of this contract dated August 14, 1944, is attached hereto. Both agreements are required to carry out the intent and purposes of the so-called Metropolitan Airports Act (Chapter 500, Minnesota Session Laws for 1943).

Attention is called to the first agreement above referred to. It will be recalled by the Board members that in the financing of the construction of the hangars of the Northwest Airlines, Inc., and Mid-Continent Airlines, Inc. that a total of $215,000 in bonds was sold by the Board of Estimate and Taxation upon the request of the City Council and this Board; and that this Board agreed with the City Council and the Board of Estimate and Taxation that the above amount would be fully amortized out of the rents received for the said hangars; and that the rents were established on that basis; and that the monies so received have been paid to the Sinking Fund of the City each month up to the present time. Your appointee and other Minneapolis appointees to the said Airports Commission have brought these facts to the attention of said Commission and have sought diligently to have the agreement so drawn as to retain for Minneapolis the income from the rental of said hangars and payments made to the Sinking Fund as heretofore, in order to fulfil the original intent and purposes of the financing of said hangars. Such a procedure was questioned as being contrary to the provisions of the Metropolitan Airports Act and an opinion on the question was obtained from the Attorney General. Copy of said opinion is attached hereto and holds that the said Airports Commission is entitled to all income from leased properties at the airport, that said Commission cannot remit to either

city any portion of its income for the retirement of outstanding bonds, that the Commission may assume the bonded indebtedness of either city but in doing so, it must do so equitably for both cities. Hence under the Attorney General's opinion, Minneapolis cannot retain the rents from said hangars, and therefore this Board cannot carry out its agreement with the City Council and the Board of Estimate and Taxation to retire the remaining bonded indebtedness for said hangar construction.

Moreover, the Supreme Court has recently held in two decisions that the law establishing the Minneapolis-Saint Paul Metropolitan Airports Commission is valid. Therefore, the Minneapolis Municipal Airport (Wold-Chamberlain Field) must be turned over to the Minneapolis-Saint Paul Metropolitan Airports Commission pursuant to said law.

Your committees are in accord with the terms of said contracts and now recommend that the proper officers of the Board be and they hereby are authorized to enter into said contracts on behalf of the Board, and to that end recommend adoption of the accompanying resolution offered by Commissioner Yale.

It is further recommended that copies of this report be transmitted to the City Council and the Board of Estimate and Taxation as explanation of the impossibility of this Board to further fulfil its agreement to make payments to the Sinking Fund for the retirement of bonds heretofore issued for the construction of the hangars for Northwest Airlines, Inc. and the Mid-Continent Airlines, Inc.

Respectfully submitted,

WASHINGTON YALE,
PAUL C. JOHNSON,
WALTER P. QUIST,
MAUDE D. ARMATAGE,
JOSEPH A. WOJCIAK,
A. F. PILLSBURY,
C. L. STACY,
H. H. BANK,
T. F. MCCARTHY,
FRANCIS A. GROSS,
Committee.

Adopted.

Commissioner Chalgren votes no.

Attached—

Two contracts—8/14/44.
Attorney General's opinion—3/29/44.
Minn. Supreme Court decision—7/7/44.

Resolution

Commissioner YALE—

Offered the following resolution:

Be It Resolved, by the Board of Park Commissioners of the City of Minneapolis that the President and Secretary are hereby authorized to execute on behalf of the City of Minneapolis, acting by and through its Board of Park Commissioners, and to deliver the two contracts submitted to this meeting, each dated August 14, 1944, and each contract being with the Minneapolis-Saint Paul Metropolitan Airports Commission; the first contract being a contract to turn over the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field) pursuant to the terms of Chapter 500 of the Session Laws of Minnesota for 1943; the second contract being a contract under the terms of which the Park Board agrees to furnish such personnel, material, supplies and services as the Commission or its Director of Airways may from time to time require and request for the operation and maintenance of the Minneapolis-Saint Paul Metropolitan Airport (Wold-Chamberlain Field) up to July 1, 1945.

Adopted.

Yeas—10; Nays—1.

Yeas—Commissioners Armatage, Bank, Johnson, McCarthy, Pillsbury, Quist, Stacy, Wojciak, Yale and Mr. President—10.

Nays—Commissioner Chalgren—1.

New Business

Commissioner Pillsbury informed the Board that he was in possession of a letter from Frank T. Heffelfinger offering

to donate to the Board an artistic fountain together with a sum of money sufficient to install the same when said amount shall have been determined. The Superintendent was instructed to determine the cost of installation and the matter was referred to the Standing Committee on Improvements.

Commissioner Chalgren—
Moved to adjourn.
Adopted.
Adjourned.

FRANCIS A. GROSS,
President.
CHAS. E. DOELL,
Secretary.

STATE OF MINNESOTA,
County of Hennepin,
City of Minneapolis, ss:

I, Chas. E. Doell, Secretary and Assistant Superintendent of the Board of Park Commissioners of the City of Minneapolis, in the County of Hennepin and State of Minnesota, do hereby certify that I have examined the attached proceedings of the Board of Park Commissioners of said City of August 2, 1944, and have carefully compared the same with the original thereof now on file in this office, and that said attached copy of proceedings is a true and correct copy from said original proceedings.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said City, this 10th day of November A. D. 1944.

Chas. E. Doell, Secretary & Ass't. Superintendent.

EXHIBIT B

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN, *Appellant,*

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. MCCARTHY, A. A. MCRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Appellees.*

AFFIDAVIT

STATE OF MINNESOTA,
County of Ramsey, ss:

John J. McDonough being first duly sworn deposes and states:

That he was on August 14, 1944, ever since has been and is now the Vice Chairman of the Minneapolis-St. Paul Metropolitan Airports Commission, created, organized and existing under and by virtue of Chapter 500, Session Laws of the State of Minnesota for 1943.

That a written agreement dated the 14th day of August, 1944, and executed as of that date by the City of Minneapolis, a municipal corporation, created, organized and operating under the laws of the State of Minnesota, acting by and through its Board of Park Commissioners, a department of the government of said city, was presented at a reg-

ular meeting of said Airports Commission, held in its offices in the City of St. Paul, Minnesota, on said 14th day of August, 1944. That said written agreement provided that said City of Minneapolis, acting by and through its said Board of Park Commissioners, turn over to said Minneapolis-St. Paul Metropolitan Airports Commission as of August 15, 1944, the use, management, operation, regulation, policing and control of the Minneapolis Municipal Airport (Wold-Chamberlain Field), and as of said date transfer all personal property owned by said City of Minneapolis, acting by and through its Board of Park Commissioners, and used in connection with said airport, to said Airports Commission, pursuant to the provisions of said Chapter 500; and that at said meeting a resolution that said written agreement be executed by the Chairman and the Secretary of said Airports Commission on behalf of said Airports Commission was duly adopted, and that immediately following said adoption said Chairman and said Secretary did execute said agreement on behalf of said Airports Commission.

That following the execution of said contract and on said 15th day of August, 1944, and pursuant to said contract and said Chapter 500, the said Board of Park Commissioners and the said City of Minneapolis, acting by and through its said Board of Park Commissioners, turned over the use, management, operation, regulation, policing and control of said Minneapolis Municipal Airport (Wold-Chamberlain Field) and transferred all said personal property to said Minneapolis-St. Paul Metropolitan Airports Commission; and that at all times since said 15th day of August, 1944, said Minneapolis-St. Paul Metropolitan Airports Commission has had and now has the use, management, operation, regulation, policing and control of said Minneapolis Municipal Airport (Wold-Chamberlain Field) and the ownership with possession and use of said personal property, all pursuant to said Chapter 500.

Affiant makes this affidavit in place of the Chairman and Secretary of said Airports Commission for the reason that both the Chairman and Secretary have been for some days past, are now and for some days to come will be absent from the State and not available for the purpose of making

an affidavit covering the facts aforesaid in time for filing with and as a part of objections to jurisdiction, and required to be filed with the above court within fifteen days after service of the jurisdictional statement of appellant.

JOHN J. McDONOUGH.

Subscribed and sworn to before me this 18th day of November, 1944.

HARRY T. O'CONNELL,
Notary Public, Ramsey County, Minn.

My Commission expires June 20, 1947.

(Notarial Seal)

(5420)